UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

STEELER, INC.

and Cases 32-CA-094491

32-CA-096588

TEAMSTERS LOCAL 853, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

32-CA-099109

DECISION AND ORDER

Statement of the Cases

On September 6, 2013, Steeler, Inc. (the Respondent), Teamsters Local 853, International Brotherhood of Teamsters (the Union), and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

At all material times, the Respondent has been a corporation with an office and place of business in Newark, California, and has been engaged in the business of manufacturing steel studs, drywall, and drywall supplies.

In conducting its operations during the calendar year ending December 31, 2012, the Respondent sold and shipped from its Newark, California facility goods valued in excess of \$50,000 directly to points outside the State of California.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act.

2. The labor organization involved

At all material times, Teamsters Local 853, International Brotherhood of Teamsters has been a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse, yard, and production employees, including all drivers, maintenance employees, machine helpers, operators, loaders, receivers, mill helpers, and banders employed by Respondent at its facility located at 6851 Smith Avenue in Newark, California; excluding all other employees, office clerical employees, guards, and supervisors as defined in the National Labor Relations Act.

On April 5, 2012, the National Labor Relations Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since April 5, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, Steeler, Inc., Newark, California, its officers, agents, successors, and assigns shall:

- 1. Cease and desist from:
- (a) Interrogating employees regarding their union sympathies and activities.
- (b) Soliciting grievances from employees and impliedly promising to resolve them by telling them that the Respondent would work something out with employees so that the Union would not have to represent them.
- (c) Impliedly promising benefits to employees if they discontinued their support for the Union.
 - (d) Interrogating an employee about his union sympathies and activities.

- (e) Impliedly promising benefits to an employee if the employee discontinued supporting the Union.
- (f) Promising benefits to an employee by telling the employee that the Respondent would give employees a wage increase as long as they were nonunion.
- (g) Threatening to shut down the Respondent's Newark, California facility if the employees continued to support the Union.
- (h) Failing to bargain in good faith by bypassing Teamsters Local 853, affiliated with the International Brotherhood of Teamsters, and dealing directly with its employees in the unit by telling them that the Respondent would talk to employees about what terms and conditions of employment they wanted and what their concerns were so that the Union would not have to come in.
- (i) Failing to bargain in good faith by bypassing Teamsters Local 853, affiliated with the International Brotherhood of Teamsters, and dealing directly with its employees in the unit by offering a unit employee participation in a program by which the Respondent would give unit employees a wage increase as long as they were nonunion.
- (j) Unilaterally increasing the wages of bargaining unit employees without affording Teamsters Local 853, affiliated with the International Brotherhood of Teamsters, an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct and without first bargaining with the Union to a good faith impasse.
- (k) Engaging in bad faith bargaining with Teamsters Local 853, affiliated with the International Brotherhood of Teamsters, by misrepresenting employee wage rates during collective-bargaining negotiations and in other communications with Teamsters Local 853, affiliated with the International Brotherhood of Teamsters.
- (I) Engaging in bad faith bargaining by delaying and frustrating the process of reducing a collective-bargaining agreement to writing and/or executing it.
- (m) Laying off unit employees out of seniority order without affording Teamsters Local 853, affiliated with the International Brotherhood of Teamsters, an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct and/or without first bargaining with the Union to a good faith impasse.
- (n) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Teamsters Local 853, affiliated with the International Brotherhood of Teamsters, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) If it has not already done so, then within 14 days of the Board's Order, pay Helper Chris Castillo one-hundred sixty dollars (\$160.00) for his 80 hours of work as a forklift operator in January 2012 subsequent to the layoff of Jesse Apodaca and Christian Jenkins to account for the \$2/hour premium forklift operators receive above helper wages.
- (b) Within 14 days of service by the Region, post at its Newark, California facility copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 31, 2012.
- (c) Within 30 days of service by the Region, Production Supervisor James Rupp shall read the notice to bargaining unit members on one occasion at its Newark, California facility.
- (d) Within 30 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.
- (e) Bargain in good faith with the Union as the collective-bargaining representative of the employees in the unit with respect to terms and conditions of employment, including wage increases, the layoff of the employees, and the application of seniority in the layoff of the employees.

Dated, Washington, D.C., November 6, 2013

Philip A. Miscimarra,	Member		
Kent Y. Hirozawa,	Member		
Harry I. Johnson, III,	Member		
NATIONAL LABOR RELATIONS BOARD			

(SEAL)

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and
protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT fail to bargain in good faith with Teamsters Local 853, affiliated with the International Brotherhood of Teamsters (the Union) in the following unit (the unit):

All full-time and regular part-time warehouse, yard, and production employees, including all drivers, maintenance employees, machine helpers, operators, loaders, receivers, mill helpers, and banders employed by us at our facility located at 6851 Smith Avenue in Newark, California; excluding all other employees, office clerical employees, guards, and supervisors as defined in the National Labor Relations Act.

WE WILL NOT bypass the Union and deal directly with our employees in the unit by telling you that we will talk to you about what terms and conditions of employment you want and/or what your concerns are so that the Union would not have to come in and/or by offering you participation in a program by which we would give you a wage increase as long as you are nonunion.

WE WILL NOT unilaterally increase your wages without affording the Union an opportunity to bargain with us about wage increases and/or without first bargaining with the Union to a good faith impasse.

WE WILL NOT engage in bad faith bargaining by misrepresenting employee wage rates during collective-bargaining negotiations and in other communications with the Union.

WE WILL NOT engage in bad faith bargaining by delaying and frustrating the process of reducing a collective-bargaining agreement to writing and executing it.

WE WILL NOT lay you off out of seniority order without affording the Union an opportunity to bargain with us with respect to the layoffs and the effects of the layoffs and/or without first bargaining with the Union to a good faith impasse.

WE WILL NOT interrogate you regarding your union sympathies and activities.

WE WILL NOT solicit grievances from you and impliedly promise to resolve them by telling you that we will work something out with you so that the Union would not have to represent you.

WE WILL NOT promise or impliedly promise benefits to you if you discontinue your support for the Union.

WE WILL NOT promise benefits to you by telling you that we will give you a wage increase as long as you are nonunion.

WE WILL NOT threaten to shut down our Newark, California facility if you continue to support the Union.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL bargain in good faith with the Union as the collective-bargaining representative of our employees in the unit with respect to terms and conditions of employment, including wage increases, the layoff of our employees, and the application of seniority in the layoff of our employees.

WE HAVE made whole employees Jesse Apodaca and Christian Jenkins for any loss of wages and benefits occasioned by our unilateral out of seniority layoff of them without bargaining with the Union and **WE WILL** make whole employee Chris Castillo for any loss of wages incurred by him because of our unilateral layoff of employees out of seniority without bargaining with the Union.

		STEELER, INC. (Employer)	
DATE:	BY:	(Representative)	(Title)